



Signed and Filed: March 8, 2024

A handwritten signature in black ink, reading "Dennis Montali", is positioned above the printed name.

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
) No. 24-50211-DM (Lead Case)
TRINITAS ADVANTAGED AGRICULTURE)
PARTNERS IV, LP, et al.,) Chapter 11
) Jointly Administered
Debtors.)
)
) Date: March 14, 2024
) Time: 10:00 AM
) Via Video/Teleconference
) www.canb.uscourts.gov/calendars
)

CONCERNS REGARDING PROPOSED INTERIM ORDER

The court has reviewed the March 1st draft Proposed Interim Order (Exhibit A to Dkt. 38), the ("PIO").

Preliminarily, the court observes that the Debtors' responses to its March 6th Concerns Regarding DIP Credit Agreement (Dkt. 42) have been satisfied. More specifically, the March 7th revision to paragraph I, 3(a) (Dkt. 45-4) are acceptable. Further, the comments regarding requested changes on pages 89 (five-day grace period), 104 (retaining jurisdiction) and 111 (mutual consent) are also acceptable.

1 As for the comment regarding page 68 (506(c) surcharge), the
2 language in the PIO on page 11 of 51, line 25 (redline version at
3 Dkt. 38-2) is acceptable. However, there are references to
4 section 506(c) at page 28 of 51, line 10 (redline version at Dkt.
5 38-2) and at page 49 of 51, line 15 (redline version at Dkt. 38-
6 2), both of which the court believes should be deleted.

7 Additional concerns in the March 1st PIO (Dkt. 38-1) are as
8 follows:

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10 In subparagraph (i)(d), Prepetition Loans, at line 6,
11 "Loan" is a defined term. It is also a defined term in the DIP
12 Credit Agreement, creating an ambiguity with an identical term
13 defined in two separate but integrally related documents but
14 having different meanings.

15 At line 14, the Loan is "secured by a validly perfected
16 lien" which cannot bind a subsequent trustee in Chapter 11, or in
17 a Chapter 7, or other parties in interest in this case
18 (collectively "Third Parties").

19 **Page 10 of 44.**

20 Same comments as immediately above regarding subparagraph
21 (d), Prepetition Liens, and paragraph (ii), No Challenges/Claims,
22 not binding on Third Parties.

23 **Page 11 of 44.**

24 Please explain why is necessary in subparagraph (iii) to
25 provide for indemnity to the very obligors on the prepetition
26 debt. Further, even if there is indemnity, why should it exclude
27 "gross negligence or willful misconduct" but not any negligence.

28 //

1 **Page 12 of 44.**

2 Subparagraph (iv), Release, cannot be binding on Third
3 Parties.

4 **Page 15 of 44.**

5 There appears to be a word missing, making unclear the
6 language on line 6 and 7 that reads “. . . under the DIP Loan,
7 the Liquidity the Debtors shall not . . .”

8 The phrase “Professional Fees Account” at line 9, said to be
9 “defined below”, is not defined in the PIO or in the DIP Credit
10 Agreement.

11 **Page 16 of 44.**

12 Subparagraph (vi) includes a “good faith” finding under
13 Bankruptcy Code § 364(e) but there is no admissible evidence in
14 the record establishing the good faith of the DIP lenders. The
15 court will accept a declaration from a responsible representative
16 of the lenders to satisfy that issue. See the published
17 Practices & Procedures on the court’s website for including an
18 analogous provisions for a buyer under Section 363(m).

19 **Page 22 of 44.**

20 The phrase “Excluded Property” at lines 12-13 (and several
21 other later places) is not defined in the PIO or in the DIP
22 Credit Agreement.

23 **Page 28 of 44.**

24 In paragraph 9(a)(i), the prepetition adequate protection
25 liens should only apply to any diminution of value in prepetition
26 perfected collateral.

27 //

28 //

1 **Page 30 of 44.**

2 The provisions of subparagraph (b)(ii) purport to grant
3 immediate relief from the automatic stay as to certain identified
4 assets but require relief from stay as to others. There should
5 no immediate relief regarding any assets.

6 **Page 32 of 44.**

7 The critical provisions of paragraph IV, 13 (a) and (b),
8 Effect of Stipulations, are obscure in their present location and
9 confusing with its reference back to paragraph D. The PIO should
10 reflect specifically that the various concessions by the Debtors
11 about perfected liens, releases, etc. only apply to it, and not
12 to any Third Parties. They should be readily observable and
13 determinable in the context of, and at the same location in the
14 PIO, as the Debtors' concessions.

15 As a minor matter, at line 23, there is a reference to
16 subparagraph (c) without any text.

17 **Page 33 of 44.**

18 The reference at the top to section 364(e) is redundant.
19 See prior comments.

20 **Page 37 of 44.**

21 The binding nature of the PIO on all other parties should be
22 limited specifically to anything pertaining to the DIP Loan or
23 other postpetition matters.

24 **Page 38 of 44.**

25 Same comment regarding paragraph 24 excluding Third Parties.

26 **Page 39 of 44.**

27 Limitations on lender Liability and Release can only be
28 binding on the Debtor in Possession and not on Third Parties.

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In paragraph 35, there is reference to "this paragraph 38".
That error should be corrected.

****END OF CONCERNS****